

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ROBIN MARIE MEEKS,

Defendant-Appellee.

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UNPUBLISHED  
February 10, 2005

No. 250676  
Wayne Circuit Court  
LC No. 03-006274-01

Before: Hoekstra P.J., and Cavanagh and Borrello, JJ.

PER CURIAM.

The prosecutor appeals as of right from a circuit court order granting defendant's motion to quash the information, thereby dismissing charges of one count of embezzlement by an agent of \$1,000 or more but less than \$20,000, MCL 750.174(4)(a), and two counts of false pretenses of \$1,000 or more but less than \$20,000, MCL 750.218(4)(a). We reverse and remand. This case is being decided without oral argument pursuant to MCR 7.214(E).

We review a magistrate's bindover decision for an abuse of discretion and the circuit court's ruling regarding the bindover decision de novo. *People v Green*, 260 Mich App 710, 713-714; 680 NW2d 477 (2004). To find the requisite probable cause for a bindover, a magistrate need not be without doubts regarding a defendant's guilt. *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003). "Probable cause requires a quantum of evidence 'sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief' of the accused's guilt." *Id.*, quoting *People v Justice (After Remand)*, 454 Mich 334; 562 NW2d 652 (1997).

The elements of the charged offense of embezzlement by an agent are:

(1) the money in question must belong to the principal, (2) the defendant must have a relationship of trust with the principal as an agent or employee, (3) the money must come into the defendant's possession because of the relationship of trust, (4) the defendant dishonestly disposed of or converted the money to his own use or secreted the money, (5) the act must be without the consent of the principal, and (6) at the time of conversion, the defendant intended to defraud or cheat the principal. [*People v Lueth*, 253 Mich App 670, 683; 660 NW2d 322 (2002).]

The circuit court, when making its determination that the evidence failed to show that the charged act, using a Commissary Fund credit card to make personal purchases, was committed without the principal's consent because there was evidence that the Wayne County Commissary Fund had a past practice of allowing workers to use the credit card for personal purposes, stated:

You know, it's just like anything else. You take something from somebody with their consent, then you haven't committed a crime. And that they would withdraw their consent after you done the act, you can't make it retroactive.

But the evidence also indicated that this practice was conditioned on the employee reimbursing the Commissary Fund. Hence, if defendant made personal purchases without intending to reimburse the Commissary Fund, it would be a nonconsensual act with the intent to defraud.

The only evidence that defendant made any reimbursement for her personal purchases before being confronted by auditors were her own statements to auditors about putting cash reimbursements in a petty cash fund. Defendant's reimbursements during the audit were untimely and made under circumstances that supported an inference that she made them only after she was confronted about the purchases and was trying to save her job. The evidence also indicated that defendant could not produce for the auditors detailed documentation regarding her personal purchases and asked another employee to lie to the auditors about who actually did the shopping at the Sam's Club for the Commissary Fund. There was sufficient evidence to enable a person of ordinary prudence and caution to conscientiously entertain a reasonable belief that defendant made purchases without intending to reimburse the Commissary Fund. Hence, the magistrate's bindover decision was not an abuse of discretion. *Yost, supra* at 126.<sup>1</sup>

The elements of the charged offense of false pretense are: "(1) a false representation concerning an existing fact, (2) knowledge by the defendant of the falsity of the representation, (3) use of the representation with intent to deceive, and (4) reliance on the false representation by the victim." *People v Reigle*, 223 Mich App 34, 37; 566 NW2d 21 (1997). If the amount involved is \$1,000 or more, the crime is a felony. MCL 750.218(4)(a).

The prosecutor argues that the two counts of false pretenses are supported by evidence that defendant obtained bonuses and tuition reimbursement for amounts greater than that authorized by her personal services contract for the period January 1, 1999, to December 31, 2002. With regard to both claims, the evidence indicated that defendant, as the controller of the Commissary Fund, drafted the checks by which she was paid the bonuses and tuition reimbursement, and then submitted the checks for signature by an authorized person. Although

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<sup>1</sup> Although the "unit of prosecution" argument raised by defendant was not raised in his motion to quash, we briefly address it in the interest of judicial economy. MCR 7.216(A)(7). Defendant's reliance on *People v Harajli*, 161 Mich App 399; 411 NW2d 765 (1987), is misplaced because *Harajli* addressed the unit of prosecution under the false pretenses statute. The embezzlement statute, MCL 750.174(6), expressly permits an aggregation of the value of money or personal property embezzled in separate incidents.

the specific act of drafting a check may be consistent with innocent activity because it was defendant's job to draft checks, the evidence that defendant was aware of the terms and monetary limitations in her own personal services contract when drafting the checks is indicative of a fraudulent intent. An intent to defraud may be inferred from the facts and circumstances of the case. *In re People v Jory*, 443 Mich 403, 419; 505 NW2d 228 (1993).

Considering that defendant's entitlement to a bonus was tied to the Commissary Fund meeting prescribed net income levels, and that an audit revealed that there was no documentation establishing that the prescribed income levels were achieved, the evidence supported an inference that defendant drafted and submitted the bonus checks for payment under false pretenses, knowing that they were not authorized by her personal services contract. We therefore hold that the magistrate did not abuse his discretion in finding the requisite probable cause for the false pretenses count based on the bonus payments. Neither defendant's speculation that the Commissary Board might have authorized a bonus in excess of her personal services contract, nor her challenge to the adequacy of the auditors' investigation, support a different result.

The second false pretenses count was supported by evidence that defendant drafted a check or checks in excess of the allowable amount for tuition reimbursement. Although the magistrate noted that there may be a question whether the Commissary Board orally modified the tuition reimbursement terms of defendant's personal services contract, this was a factual issue to be resolved by the jury and it was not necessary that the magistrate resolve the issue to find probable cause that defendant committed a false pretenses crime. Upon de novo review of the record, we are satisfied that the magistrate did not abuse his discretion in binding defendant over for trial on the false pretenses charge based on the tuition reimbursements. *Green, supra* at 713; *Yost, supra* at 126.

Reversed and remanded for reinstatement of the charges. We do not retain jurisdiction.

/s/ Joel P. Hoekstra

/s/ Mark J. Cavanagh

/s/ Stephen L. Borrello